

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH GIBBS,

Plaintiff,

v.

CARSON, et al.,

Defendants.

No. C 13-0860 THE (PR)

ORDER DISMISSING UNSERVED
DEFENDANT CRINKLAW; DIRECTING
PLAINTIFF TO PROVIDE CURRENT
ADDRESS NECESSARY TO LOCATE
DEFENDANT MARTINELLI

On February 26, 2013, Plaintiff Kenneth Gibbs, an inmate at California State Prison-Sacramento (CSP-SAC), filed this civil rights action under 42 U.S.C. § 1983 raising twenty-three claims against forty defendants who worked at Pelican Bay State Prison (PBSP), where Plaintiff was formerly incarcerated. On April 24, 2013, the Court issued an Order dismissing the complaint with leave to amend and, on May 8, 2013, Plaintiff filed a first amended complaint (FAC).

On May 16, 2013, the Court screened the FAC and ordered service of eight cognizable claims against twelve defendants. The claims found to be cognizable were: (1) an Eighth Amendment claim for deliberate indifference to serious medical needs against Dental Assistant Tupman; (2) an Eighth Amendment claim for deliberate indifference to serious medical needs against Dr. Crinklaw and Dr.

1 Malo-Clines; (3) a First Amendment retaliation claim against Lt.
2 Diggle for issuing a Rules Violation Report (RVR) against
3 Plaintiff; (4) a First Amendment retaliation claim against Warden
4 Lewis and Capt. Wood for transferring Plaintiff in order to force
5 him to withdraw an administrative appeal; (5) a First Amendment
6 retaliation claim against Counselor Royal, Officer Milton, and
7 Capt. Wood for placing Plaintiff on C status in retaliation for
8 Plaintiff's filing administrative appeals; (6) a due process claim
9 against Lt. Anthony for denying Plaintiff's right to a witness at a
10 disciplinary hearing; (7) an Eighth Amendment claim against Sgt.
11 Acosta and Officer Castellaw for cruel and unusual punishment for
12 leaking information about Plaintiff to other inmates; and (8) an
13 Eighth Amendment claim against Officer Evans for using excessive
14 force against Plaintiff.

15 On August 22, 2013, the Court issued an order noting that
16 four defendants – Tupman, Anthony, Dr. Malo-Clines, and Dr.
17 Crinklaw – remained unserved. Accordingly, the Court ordered
18 Plaintiff to provide the Court with their current locations such
19 that the United States Marshal could effectuate service. In the
20 same order, the Court requested that the PBSP Litigation
21 Coordinator provide forwarding addresses for the unserved
22 defendants. The Court advised Plaintiff that if it did not receive
23 accurate current addresses for the unserved defendants, or if
24 service failed a second time, the claims against the unserved
25 defendants would be dismissed.

26 Subsequently, on September 6, 2013, the PBSP Litigation
27 Coordinator filed a letter in this action advising the Court that
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1 it would accept service for two of the unserved defendants. The
2 letter also provided forwarding addresses for the remaining two
3 unserved defendants – Drs. Malo-Clines and Crinklaw.

4 On February 19, 2014, Plaintiff filed a motion for leave
5 to file a second amended complaint (SAC) adding Dr. Thomas
6 Martinelli as a defendant on his Eighth Amendment claim for
7 deliberate indifference to serious medical needs. On May 13, 2014,
8 the Court granted the motion and directed the Marshal to serve Dr.
9 Martinelli at Sutter Coast Hospital in Crescent City, California –
10 where Plaintiff indicated he was located.

11 On June 6, 2014, the Marshal informed the Court that it
12 could not serve Dr. Martinelli. The process receipt and return
13 filed by the United States Marshal states that: “[Dr. Martinelli]
14 does not work at any of the CC [Crescent City] locations. Persons
15 stated they think he is somewhere in Santa Barbara.” See Doc.
16 #101.

17 Although a plaintiff who is incarcerated and proceeding
18 in forma pauperis (IFP) may rely on service by the Marshal, such
19 plaintiff “may not remain silent and do nothing to effectuate such
20 service”; rather, “[a]t a minimum, a plaintiff should request
21 service upon the appropriate defendant and attempt to remedy any
22 apparent defects of which [he] has knowledge.” Rochon v. Dawson,
23 828 F.2d 1107, 1110 (5th Cir. 1987).

24 Because Plaintiff has not provided sufficient information
25 to allow the Marshal to locate and serve defendant Dr. Martinelli,
26 Plaintiff must remedy the situation or face dismissal of his claims
27 against Dr. Martinelli without prejudice. See Walker v. Sumner, 14
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1 F.3d 1415, 1421-22 (9th Cir. 1994) (holding prisoner failed to show
2 cause why prison official should not be dismissed under Rule 4(m)
3 where prisoner failed to show he had provided Marshal with
4 sufficient information to effectuate service). Pursuant to Fed. R.
5 Civ. P. 4(m), if a complaint is not served within 120 days from the
6 filing of the complaint, it may be dismissed without prejudice for
7 failure of service. When advised of a problem accomplishing
8 service, a pro se litigant proceeding IFP must "attempt to remedy
9 any apparent defects of which [he] has knowledge." Rochon, 828
10 F.2d at 1110. Accordingly, Plaintiff must provide the Court with
11 accurate and current address for Dr. Martinelli such that the
12 Marshal is able to effect service.¹

13 Also in its May 13, 2014 order, the Court directed the
14 Marshal to serve Drs. Malo-Clines and Crinklaw at the forwarding
15 addresses provided by the PBSP Litigation Coordinator in his
16 September 6, 2013 letter. On June 2, 2014, the summons for Dr.
17 Crinklaw was returned as unexecuted. The Marshal advised that the
18 address provided was not a valid address. Consequently, Dr.
19 Crinklaw remains unserved. As it appears that any further attempts
20 to serve this defendant would be futile, defendant Dr. Crinklaw
21 will be dismissed without prejudice pursuant to Rule 4(m).²

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¹ Because it appears that Dr. Martinelli was never employed by
25 the CDCR, the Court will not ask the PBSP Litigation Coordinator to
26 provide location information for him.

² The summons for Dr. Malo-Clines has not yet been returned as
27 either executed or unexecuted.
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CONCLUSION

In light of the foregoing, the Court orders as follows:

1. Defendant Dr. Crinklaw is hereby DISMISSED without prejudice pursuant to Rule 4(m). The Clerk shall terminate Dr. Crinklaw as a defendant on the Court docket.

2. Plaintiff must provide the Court with an accurate and current address for defendant Dr. Martinelli. If Plaintiff fails to provide the Court with an accurate and current address within thirty (30) days of the date this Order is filed, Plaintiff's claims against Dr. Martinelli will be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

3. If the requested information is provided to the Court, service shall again be attempted. If service fails a second time, the claims against Dr. Martinelli shall be dismissed without prejudice.

IT IS SO ORDERED.

Dated: 07/02/2014



THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

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